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Attorneys for Defendant FRIT  
 ESCONDIDO PROMENADE, LLC

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

LARRY MCIVER,

Plaintiff,

v.

TARGET CORPORATION dba  
 TARGET #274; COST PLUS, INC. dba  
 COST PLUS WORLD MARKET #145;  
 FRIT ESCONDIDO PROMENADE,  
 LLC; LA SALSA, INC. dba LA SALSA  
 #93; APPLEBEE'S RESTAURANTS  
 WEST, LLC dba APPLEBEE'S  
 NEIGHBORHOOD BAR & GRILL  
 #5711; TOYS 'R' US – DELAWARE,  
 INC. dba TOYS 'R' US #5633; PARTY  
 CITY CORPORATION dba PARTY  
 CITY OF ESCONDIDO #445;  
 INLAND WESTERN MDS  
 PORTFOLIO, LLC,

Defendants.

) USDC No. 08 CV 0132 IEG WMc  
 ) Complaint Filed: January 23, 2008  
 )  
 ) **DEFENDANT FRIT ESCONDIDO**  
 ) **PROMENADE, LLC'S NOTICE OF**  
 ) **MOTION AND MOTION TO**  
 ) **CONTINUE EARLY NEUTRAL**  
 ) **EVALUATION CONFERENCE**  
 ) **PENDING HEARING ON MOTION**  
 ) **TO DISMISS STATE LAW**  
 ) **CLAIMS AND DECLINE**  
 ) **SUPPLEMENTAL JURISDICTION**  
 )  
 )  
 ) ENE Conference Date: April 4, 2008  
 ) Time: 9:30 a.m.  
 ) Courtroom: C, 1st Floor  
 ) Magistrate Judge: Hon. William  
 ) McCurine, Jr.  
 )  
 ) **ORAL ARGUMENT NOT**  
 ) **REQUIRED**  
 )

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:  
 2 PLEASE TAKE NOTICE THAT Defendant FRIT ESCONDIDO  
 3 PROMENADE, LLC, hereby moves the Court for an order continuing the Early  
 4 Neutral Evaluation Conference until after the Court rules on this moving  
 5 defendant's Motion to Dismiss the state law claims asserted against it in this  
 6 action.

7 This Motion is made on the grounds that the Court should continue the Early  
 8 Neutral Evaluation Conference, currently set for April 4, 2008, until after this  
 9 moving defendant's Motion to Dismiss is heard on April 28, 2008. Because the  
 10 Motion to Dismiss seeks the dismissal of all claims in which legal damages are  
 11 sought, prior resolution of that motion is crucial to any substantive settlement  
 12 negotiations with plaintiff. If the Early Neutral Evaluation Conference is held  
 13 before the Court rules on the Motion to Dismiss, then the parties will have no  
 14 realistic chance of reaching a substantive settlement, because plaintiff has  
 15 demanded legal damages on claims that are likely to be dismissed by the Court.

16 This Motion is based upon this notice, the concurrently filed memorandum  
 17 of points and authorities, the concurrently filed proposed order, the previously filed  
 18 Motion to Dismiss (Docket Entry No. 32), all documents and pleadings on file with  
 19 the Court in this matter, and upon such oral and documentary evidence as may be  
 20 presented at the hearing of this motion, if any.

21 Dated: March 18, 2008

SCHLICHTER & SHONACK, LLP

22  
 23 /s/ - Steven C. Shonack

By: KURT A. SCHLICHTER

STEVEN C. SHONACK

Attorneys for Defendant FRIT

ESCONDIDO PROMENADE, LLC

1                   **MOTION TO CONTINUE EARLY NEUTRAL EVALUATION**  
2                   **CONFERENCE**

3                   Defendant FRIT ESCONDIDO PROMENADE, LLC, by counsel, hereby  
4 requests that the Court continue the Early Neutral Evaluation Conference in this  
5 action, currently scheduled for April 4, 2008, to be held on a date of the Court's  
6 convenience that is after the Court rules on Defendant's pending Motion to  
7 Dismiss State Law Claims, which is currently set to be heard on April 28, 2008.  
8

9                   Such a continuance is necessary so that the parties can meaningfully  
10 participate in the Early Neutral Evaluation Conference after the Court has ruled as  
11 to whether plaintiff will be permitted to maintain state law claims, seeking legal  
12 and statutory damages, against this moving defendant in this action. If the Early  
13 Neutral Evaluation Conference is held prior to the Court's ruling on the Motion to  
14 Dismiss, there will be little to no chance that a settlement will be reached because  
15 the nature of the claims, and damages, that will go forward in the action would not  
16 yet be determined.

17 Dated: March 18, 2008

SCHLICHTER & SHONACK, LLP

19                   /s/ - Steven C. Shonack

20 By: KURT A. SCHLICHTER

STEVEN C. SHONACK

Attorneys for Defendant FRIT

ESCONDIDO PROMENADE, LLC